

§ 1.920

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of VA's determination with respect to the amount and validity of the debt waiver under 5 U.S.C. 5584 or 38 U.S.C. 5302, or providing or not providing an oral hearing.

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716; 38 U.S.C. 501).

[52 FR 42108, Nov. 3, 1987. Redesignated and amended at 69 FR 62196, Oct. 25, 2004]

§ 1.920 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of collection action. Collection action may include the offsetting of the debt from any current or future payment, except salary (see paragraph (e) of this section), made by such Federal or State agency to the person indebted to VA.

(b) VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date VA's right to collect the debt first accrued.

(c) This certification will also state that VA provided the debtor with written notice of:

(1) The nature and amount of the debt;

(2) VA's intention to pursue collection by offset procedures;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;

(5) The opportunity to enter into a written agreement with VA for the repayment of the debt; and

(6) Other applicable notices required by §§ 1.911, 1.911a, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both VA and the debtor subsequent to the notice, as well as the dates of such actions.

(e) The referral by VA of a VA debt to another agency for the purpose of salary offset shall be done in accordance with 38 CFR 1.980 through 1.995

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and regulations prescribed by the Director of the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[52 FR 42108, Nov. 3, 1987. Redesignated and amended at 69 FR 62196, Oct. 25, 2004]

§ 1.921 Analysis of costs.

VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

(Authority: 31 U.S.C. 3711-3719; 38 U.S.C. 501).

[69 FR 62196, Oct. 25, 2004]

§ 1.922 Exemptions.

(a) Sections 1.900 through 1.953, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of §§ 1.900 through 1.953 when collecting debts owed by persons employed by agencies

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administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

(Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

[69 FR 62196, Oct. 25, 2004]

§ 1.923 Administrative wage garnishment.

(a) In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, VA or Treasury may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to VA. VA may pursue wage garnishment independently in accordance with this section or VA or Treasury may pursue garnishment after VA refers a debt to Treasury in accordance with § 1.910 of this part and 31 CFR 285.12. For the purposes of this section, any reference to Treasury also includes any private collection agency under contract to Treasury.

(b) At least 30 days prior to the initiation of garnishment proceedings, VA or Treasury shall send a written notice, as described in 31 CFR 285.11(e), by first class mail to the debtor's last known address. This notice shall inform the debtor of:

(1) The nature and amount of the debt;

(2) The intention of VA or Treasury to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;

(3) An explanation of the debtor's rights, including the opportunity:

(i) To inspect and copy VA records pertaining to the debt;

(ii) To enter into a written repayment agreement with VA or Treasury under terms agreeable to VA or Treasury, and;

(iii) To a hearing in accordance with 31 CFR 285.11(f) and paragraph (c) of this section concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement

under paragraph (b)(3)(ii) of this section.

(c) Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies.

(1) The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity. The hearing official shall establish the time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hearing shall be borne by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(2) If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record.

(3) If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph (b) of this section, then VA or Treasury shall not issue a